

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

United States of America

Plaintiff,

vs.

Enroy O'Neil Duncan,

Defendant.

Case No. 3:21-CR-00203-PDW-1

DEFENDANT'S SENTENCING
MEMORANDUM

- ¶ 1. By Defendant, Enroy O'Neil Duncan, by his attorneys, Sand Law, PLLC:
- ¶ 2. Defendant is set for sentencing in this matter on 1/19/2024.
- ¶ 3. Per the Plea Agreement in this matter, the Government will be recommending a sentence of imprisonment at the low end of the Guideline sentencing range, will be recommending the Defendant be ordered to pay \$333,390.00 in restitution to the Small Business Administration, and move to dismiss counts 2, 3, 4, and 5.
- ¶ 4. Defendant will argue that Defendant should be given a sentence of time served as well as a term of supervised release.
- ¶ 5. Analysis of 18 USC § 3553 factors to be considered in imposing a sentence:
 - a. Nature and circumstances of the offense and the history and characteristics of the defendant:
 - i. Nature and circumstances of the offense – Mr. Duncan's offense is not violent in nature and, although he accepts responsibility for his actions, his actions were more irresponsible than intentionally criminal. He allowed a person he did not know to make representations using his signature that

were ultimately used in the obtaining of a fraudulent loan. The Government makes a number of allegations regarding Mr. Duncan's conduct in this case in the course of their Sentencing Memorandum Supplement. Mr. Duncan maintains that the version of events presented at the Change of Plea is what in fact occurred.

- ii. History of the Defendant – Mr. Duncan has no juvenile adjudications, no adult criminal convictions, and no other criminal conduct, pending charges, or arrests. He should therefore be credited with the 4C1.1 adjustment as acknowledged by the Government.
- iii. Characteristics of Defendant – Mr. Duncan has a close relationship with his parents and six siblings. Mr. Duncan also has three children whom he visits and talks on the phone with regularly. He shares a good coparenting relationship with each of the mothers. Having served seven years in the Jamaican military and two years in the US military, Mr. Duncan prides himself on being self-sufficient, tough, and able to solve his own problems. Mr. Duncan does not report any alcohol or drug abuse issues, has always maintained consistent employment, and aspires to return to school to complete his degree in Commercial Aviation, with a minor in business administration. Mr. Duncan hopes to become a commercial airline pilot. Ultimately, Mr. Duncan wishes to take responsibility for his actions and to be able to move forward with his life in a positive manner. Defendant's positive characteristics are described in detail in the character letters which have been submitted on his behalf.

b. Need for the sentence imposed to...

- i. Reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense – Mr. Duncan, by pleading guilty, will bear the burden of a felony conviction and will be obligated to pay back a large amount of restitution. These are serious consequences.
- ii. Afford adequate deterrence to criminal conduct – The prosecution of Mr. Duncan has had a real impact on him. He is determined to take responsibility for his actions, and this has taught him to be more mindful of his actions. He will also have real consequences for his actions, including a felony conviction and sizable restitution. Therefore, a sentence of time served does provide adequate deterrence.
- iii. Protection of the public from further crimes of Defendant – Mr. Duncan's alleged crimes do not pose a risk to the public. Given Mr. Duncan's lack of criminal history, there is no indication or reason to believe he is a risk to the public. Additionally, following his Initial Appearance in November of 2021, Mr. Duncan was released on bond with conditions and has not engaged in any behavior while out on release that has posed a serious risk to the public or demonstrated a need for protection of the public.
- iv. To provide the Defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner – as previously mentioned, Mr. Duncan hopes to complete his degree and pursue employment as a commercial airline pilot. Mr. Duncan has previously completed 69 college credits toward his degree. Incarceration

does not advance Mr. Duncan's education.

¶ 6. Reply to Government's Sentencing Memorandum and Supplement:

- a. The Government makes a number of allegations against Mr. Duncan in their Sentencing Memorandum and Supplement. The gist of these allegations is that Defendant is minimizing his offense conduct and therefore not taking responsibility for his actions in this case.
- b. Mr. Duncan strongly disagrees with this characterization. Mr. Duncan very much wants to take responsibility for his role in the fraudulent scheme that led to the present matter. But he is also not inclined to admit to things he did not do. He does acknowledge and believe that his providing a signed-off-on tax document to a person who essentially amounted to a stranger was a huge error in judgment and led to him willfully involving himself in that person's broader criminal scheme. He acknowledges that the reason he did this was for his own personal benefit and no one else's. He believed that he would be obtaining a loan that would benefit him and would not need to be paid back. Mr. Duncan wants to pay the money back that the Government lost as a result of his conduct and is therefore stipulating to the amount of restitution.
- c. For these reasons Mr. Duncan does believe he should qualify for the acceptance of responsibility and timely notification reductions to the offense level that the Government is objecting to and would ask that the Court find as the PSI writer did that these reductions should apply.

¶ 7. Defendant believes that due consideration of these factors supports Defendant's recommendation.

Dated: 1/16/2023

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